



## Human rights in post-revolution Georgia

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### Introductory remarks

In January 2004, Amnesty International called on the Georgian government to take steps towards strengthening the protection of human rights and on Saakashvili to “put human rights at the heart of his policies”.<sup>1</sup> AI especially encouraged the new government to ensure the freedom of religious minorities, work towards the prevention of torture and ill-treatment by the police and to ensure freedom of expression and association in the country.

Indeed, to increase the respect for human rights in Georgia has been an important task for the new government since it took office after the “Rose Revolution” in 2003. However, with several issues to deal with such as a legacy of widespread corruption and the fight for territorial sovereignty, human rights have had a questionable place on the political agenda.

This paper highlights some particular human rights concerns in post-revolution Georgia, taking into account the obstacles that the new government has faced in its first year in office. The purpose is to equally identify issues, efforts and indeed progresses in light of Georgia’s obligations under international human rights law.

### Human rights setbacks in the fight against terrorism

In 2002, in response to Russian allegations of Georgia allowing Chechen “terrorists” to cross the border into Georgian territory, five persons of Chechen origin was extradited to Russia, allegedly without a court order.<sup>2</sup> After the issue was brought to the attention of the European Court of Human Rights, Georgia refused in 2003 to extradite three men to Russia, an action which was identified by human rights organizations as a positive stand from Georgia in fulfilling its international obligations.<sup>3</sup>

In the beginning of 2004, the two Chechens Mulkoyev and Alkhanov were charged in a Tbilisi court with illegal border crossing and entry into Georgian territory. Ten days after their release they disappeared and were later detained by Russian authorities at the border between Georgia and Russia. Human Rights organizations fear that Georgian authorities had secretly extradited the two Chechens, a notion that has persistently been denied by the Georgian government.<sup>4</sup>

Only a month before, Amnesty International had called on the new government to prioritize human rights in international relations, taking as an example the extradition of Chechens terrorists to Russia in spite of the obligation not to extradite a person to a country where is risks human rights abuses.<sup>5</sup> This provision, referred to as the principle of non-refoulement, has been described by the United Nations High Commissioner for Refugees (UNHCR) as encompassing: “...any measure attributable to the State which could have the effect

<sup>1</sup> “President Saakashvili should put human rights at the heart of his policies”, Amnesty International Press Release, Georgia, 25 January 2004.

<sup>2</sup> Human Rights Information and Documentation Center (HRIDC), “One step forward, two steps back, Human rights in Georgia after the “Rose Revolution”, December 2004. pp 18, et seq.

<sup>3</sup> See e.g. supra note 1.

<sup>4</sup> Ibid.

<sup>5</sup> Supra note 1.

of returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier, or indirect refoulement.”<sup>6</sup> Georgia is party to a number of human rights mechanisms which emphasizes the principle of non-refoulement, such as the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the 1951 Convention relating to the Status of Refugees and its 1967 protocol. Additionally, non-refoulement is a principle of customary international law and is thereby binding upon all states.

Moreover, the protection of Chechen refugees has seemingly not improved, although Georgia as a party to the 1951 Refugee Convention is obliged to protect refugees on its territory. During 2004, Chechens in the Pankisi Gorge reportedly protested police harassment and arbitrary house searches. In August raids were carried out against homes occupied by Chechen refugees and twelve men were detained for illegal border crossing, but released several days later.<sup>7</sup> Other sources report that 19 men were detained in Pankisi and 14 female refugees were exposed to violence.<sup>8</sup>

In the aftermath of the hostage taking in Beslan, possibly fearing new accusations from Russia of terrorism activity on Georgian territory, the Georgian Ministry of Internal Affairs promised in October 2004 to provide Russia with a list of Pankisi residents. Additionally, unconfirmed sources speak of recent and unjust denial of entry of Chechen refugees at the Georgian border.

The treatment of Chechens may be seen as a more or less successful attempt from Georgia to show its willingness to comply with demands from Russia to fulfill its anti-terrorism obligations that it is allegedly disobeying. Georgia has here had a difficult issue to deal with. On one hand, the government is facing strong criticism by leading NGOs of human rights abuses as well as breaches of treaty obligations and international law in general. On the other hand, Russia is of the opinion that it has a right to undertake military actions against neighboring states that tolerates terrorism.<sup>9</sup>

### **Torture as a remaining concern**

Torture constitutes another major issue for the government to deal with. Human Rights Watch reported in its 2005 briefing paper on Georgia<sup>10</sup> continuing occurrence of torture in detention centers and police custody, including beatings, threats of rape and use of electric shocks. Local NGOs report that since the “Rose Revolution”, at least two people have died from torture in Georgia and the number of torture victims stays high.<sup>11</sup>

In addition to actual practice of torture, the judicial system has been accused of ignoring torture allegations and perpetrators are not brought to justice.<sup>12</sup> There is seemingly a lack of application of existing mechanisms and in this respect a weak rule of law is playing a significant part. Human Rights Watch has further criticized the application of the plea bargaining system that was introduced to the Georgian criminal code in 2004 which seemingly has enabled law enforcement officials to - by financial means - hinder investigations into cases involving torture.<sup>13</sup>

Local NGOs also state that planting of false evidence, isolation, and restriction for detainees of access to their families are still common occurrences in Georgia. Arbitrary detentions, violating the right of a suspect to be brought personally before a judge and to have access to legal representation, are still carried out.<sup>14</sup>

<sup>6</sup> Summary Conclusions: the principle of non-refoulement Expert Roundtable organized by the United Nations High Commissioner for Refugees and the Lauterpacht Research Centre for International Law, University of Cambridge, UK, 9–10 July 2001.

<sup>7</sup> Human Rights Watch, Country summary Georgia, January 2005.

<sup>8</sup> Supra note 2.

<sup>9</sup> Between December 2004 and February 2005, Russian officials made a number of media statements claiming to have a right to carry out pre-emptive strikes against neighboring countries which provide sanctuary to Chechen fighters.

<sup>10</sup> “Georgia: Uncertain torture reform”, Human Rights Watch Briefing Paper, April 12 2005.

<sup>11</sup> Supra note 2.

<sup>12</sup> Supra note 7.

<sup>13</sup> Supra note 10.

<sup>14</sup> Supra note 2.

In the fight against corruption, leading politicians have been targeted and arrested and there are reports of torture and ill-treatment of those detained for corruption. There is also a concern about the charges of many of the detained ex-politicians, who may in fact be held as political prisoners, which may come to constitute an increasing issue of concern.<sup>15</sup>

## **Efforts and progress**

Georgia is party to a number of central Human Rights instruments, such as the United Nations Convention on Human Rights and the two Additional Protocols of the Convention on Civil and Political Rights, the European Convention on Human Rights and the 1951 Convention for the Protection of Refugees.<sup>16</sup> In 1994, Georgia acceded the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and in the same year the United Nations Convention on Torture and other Cruel, Inhuman or Degrading Treatment. In 2000, Georgia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987.<sup>17</sup>

There are indeed examples of areas in relation to human rights where the new government has taken progressive steps, one being appointing a new human rights Ombudsman in September 2004 to monitor the national human rights situation. In response to the issue of continuing torture abuses, the Ministry of Internal Affairs has together with the Ombudsman and the OSCE sought to establish a plan for the monitoring of police and detentions centers. The plan further involves adjusting the national legislation to international human rights standards, increase the application of investigation mechanism as regards torture, providing training to officials and establishing monitoring bodies.<sup>18</sup> So far, one of the most successful international efforts in Georgia has been the EU Rule of Law Mission, carried out between July 2004 and July 2005, which has attempted to strengthen the rule of law in judicial investigations, pre-trial detention, sentences and court procedures.<sup>19</sup>

On the national level, the legacy of religious intolerance, including violent attacks against Jehovah's Witnesses, Evangelists and Baptists, seems to have decreased during 2004 creating a more stable environment for freedom of religion in Georgia.<sup>20</sup> Furthermore, some state-owned newspapers and television channels were privatized after the revolution providing a more independent media which reportedly has been exposed to less harassment than before. However, the US State Department pointed out in its 2004 human rights report that instead, self-censorship by journalists has increased, possibly to please the new government.<sup>21</sup>

In its 2005 briefing paper, Human Rights Watch laid down a number of recommendations to the Georgian government, including some legal reforms such as guaranteeing access to legal representation for detainees, ensuring that the police and judicial bodies are separated and establishing an independent body for reviewing judges. It furthermore called on the US to condition any future security assistance to Georgia taking concrete steps toward preventing torture.<sup>22</sup>

<sup>15</sup> Ibid.

<sup>16</sup> Reports on Human Rights in Georgia of 2003, Swedish Foreign Ministry, 2003.

<sup>17</sup> Supra note 2. Note however that the list of human rights conventions is not exhaustive.

<sup>18</sup> Supra note 2, at p. 9.

<sup>19</sup> See Lobjakas "Georgia: EU set to end successful "Rule of Law" mission" in: Radio Free Europe, 19 April 2005.

<sup>20</sup> Supra note 7.

<sup>21</sup> U.S. Department of State, "Country reports on human right practices – 2004: Georgia", 2004.

<sup>22</sup> Supra note 10.

## **Conclusive remarks**

In light of recent evaluations by leading human rights organizations, the protection of human rights undoubtedly needs further efforts by the Georgian government. Continuing occurrence of torture remains the greatest concern and highlights one of the most important problems related to the protection of human rights in Georgia, namely a weak implementation of existing human rights instruments. Whereas Georgia is de jure party to a number of the main international mechanisms, their de facto applications remain important challenges. The newly appointed Ombudsman should play an important part in promoting the application by the civil authorities of, for instance, the human rights legislation that Georgia is bound to comply with after its admission to the Council of Europe in 1999.

The implementation of human rights instruments faces however sociological obstacles that may take time to overcome. Whereas, for instance, mechanisms for the protection of women's rights in Georgia are available, many women - especially in rural areas - fail to take advantage of their international recognized rights due to deep-rooted attitudes as regards pride and reputation.

Two of the major issues for the new government to deal with, corruption and national integrity, particularly in relation to Russia, have had noteworthy setbacks on human rights. Alleged torture and ill-treatment of those charged with corruption witnesses, as suggested by leading NGOs, of a strong need to monitor the police and judicial system. Human rights abuses and unlawful extraditions of Chechens to Russia show that human rights has been neglected in national, as well as international, anti-terrorism projects. A stronger international emphasis on human rights in anti-terrorism projects seems to be required, so does international monitoring of the Georgian-Russian border to avoid further allegations of "terrorism" activity on Georgian territory.